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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 05/21/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/848,112

Applicant(s)

PERTEGAZ-ESTEBAN, VICTOR

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24, 26 and 30-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24, 26 and 30-38 is/are rejected.
- 7) ☒ Claim(s) 32 and 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9, 10, 13.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the grasping member rotating with respect to the handle base member about a second axis of rotation **orthogonal** to the first axis of rotation **and** the handle base member further comprising **an asymmetrical shape** (claim 24); and the first axle **rotatably** connected with the base member and extending angularly from the base member (claim 30) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Presumably, claim 24 is shown in Fig. 12, but the second axis, as shown by grip 44, is not orthogonal to the first axis 80. Presumably, the handle assembly of claim 30 is shown in Figs. 3-5, but the first axle 50 is not shown as rotatably connected with the base member 42, as described on page 5, lines 22-27 of the specification.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. Applicant's proposed drawing corrections, filed with the last response are acceptable.

Claim Objections

2. Claims 32 and 36 are objected to because of the following informalities:

in claim 32, line 3, one of the recitations of "second" presumably should be changed to --third--; and

in claim 36, lines 2-3, the recitation "said first axis of rotation" lacks antecedent basis and presumably refers to a first axis of rotation defined by the longitudinal axis 80 shown in Fig. 4.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 26 is rejected under 35 U.S.C. 102(e) as being anticipated by *Cybex*

International, Inc. (Commercial Strength Systems catalog, April 2000, pgs. 9 and 36). *Cybex* discloses several exercise machines, 4535 Arm Curl on page 9, 5255 Rear Delt on page 36 and 5281 Arm Curl on page 36, comprising a handle assembly operably attached to an arm assembly of the exercise machine, wherein the handle assembly comprises a handle member having a base, the handle member rotatably connected to the arm assembly about a first axis of rotation; and the base having a first side heavier than a second side such that when the exercise machine is not in use, the handle member rotates to an upright position in which the first side is below the second side. This is clearly shown in the 4535 Arm Curl machine on

page 9. The first axis of rotation is offset from the centerline of the base of the handle member so that one side of the handle member is heavier than the other side of the handle member.

5. Claims 30, 32, 33, 35 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by *Webber et al.* (US Pat. 6,579,213 B1). *Webber et al.* discloses an exercise machine comprising at least one arm assembly 122 operably attached to a load 54; a handle assembly 110 comprising a generally U-shaped bracket 112 defining a base member 114 and supporting a gripping portion 117. A first axle 118

6. Claims 30, 32, 35, 36, 38 are rejected under 35 U.S.C. 102(b) as being anticipated by *Telle* (US Pat. 5,344,374). *Telle* discloses an exercise device having a load 72 comprising at least one arm assembly 36 operably attached to the load; a handle assembly 48 comprising a generally U-shaped bracket 50 defining a base member 93 and supporting a gripping portion 83. A first axle 49' (see Figs. 11-13) is rotatably connected with the base member 93 and extends angularly from the base member 93. A second axle 95 is pivotally connected with the first axle 49' and the second axle 95 is operably attached to the arm assembly 36. A third axle 39 is rotatably connected with the at least one arm assembly 36. The second axle 95 is operably connected with the third axle 39. The U-shaped bracket 50 defines first and second legs 88 extending generally transverse from the base member 93 with the gripping portion 83 rotatably connected between the first and second legs. The handle assembly 48 pivots in at least one orthogonal direction, such as defined by bolts 49 or axle 95, with respect to a first

axis of rotation, as defined by bolt 49'. The first pivot axle 49' extends perpendicular from the base member 93.

7. Claims 30, 32, 34 and 36-38 are rejected under 35 U.S.C. 102(e) as being anticipated by *Fulks* (US Pat. 6,500,106 B1). *Fulks* discloses an exercise device comprising at least one arm assembly 374 operably attached to a load and a handle assembly 395 (Fig. 17) comprising a generally U-shaped bracket 397 defining a base member and supporting a gripping portion 396. A first axle, rod with end 398, is rotatably connected with the base member and extends angularly from the base member. A second axle 402 is pivotally connected with the first axle and is operably attached to the arm assembly. A third axle A_2 is rotatably connected with the at least one arm assembly and the second axle is operably connected with the third axle. A sleeve, top end of arm 374, is attached to the third axle and the arm assembly. A ball-type pivot joint 399 pivotally connects the first and second axles. The handle assembly pivots in at least one orthogonal direction with respect to a first axis of rotation. The first pivot axle pivots in at least two orthogonal directions with respect to the second axle. The first axle extends perpendicularly from the base member.

8. Claims 30, 31, 34, 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by *Berne* (US Pat. 2,921,791). *Berne* discloses an exercise device comprising at least one arm assembly 6 operably attached to a load 38 (Fig. 12). A handle assembly comprises a generally U-shaped bracket 35b defining a base member and supporting a grip portion. A first axle 6e is rotatably connected with the base member and extends angularly from the base member. Note

that 35a is internally threaded to be rotatable relative to first axle socket member 6e. A second axle 6d is pivotally connected with the first axle by a ball-type joint and is operably attached to the arm assembly. The first axle and the second axle may be longitudinally aligned during use. Fig. 9 shows the first and second axle nearly longitudinally aligned and it can be seen that the first and second axle clearly may be longitudinally aligned during use at some point. The handle assembly pivots in at least one orthogonal direction with respect to a first axis of rotation and the first axle pivots in at least two orthogonal directions with respect to the second axle.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Habing* (US Pat. 5,417,633) in view of *Webber et al.* (US Pat. 6,579,213 B1). *Habing*'633 discloses an exercise machine having a load wherein the primary movement is a pushing motion to actuate the load. The machine comprises at least one arm assembly 130' (see Fig. 5) operably attached to the load; a handle base member 158 rotatably attached to the arm assembly. the handle base member rotating with respect to the arm assembly about a first axis of rotation 154. A grasping member 160 is attached to the handle base member and is oriented orthogonal

to the first axis of rotation. The handle base member comprises an asymmetrical shape about the first axis of rotation such that when not in use, the handle base member rotates to an upright position. *Habing*'633 does not disclose the grasping member rotatably attached to the handle base member.

Webber et al. discloses an exercise machine comprising a grasping member 44 rotatably attached to a handle base member 46, the handle base member being rotatably attached to an arm assembly 20. The rotatable attachment of the grasping member allows a user to adjust their hand/wrist position at any time during the course of an exercise without causing strain or binding to the wrist (col. 7, lines 3-7). The combination of pivoting grip, handle, and swing arm allows the user to determine their ideal exercise path and provides self-alignment during course of the exercise movement.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the grasping member of *Habing*'633 with the rotatable connection of *Webber et al.*, in order to allow a user to adjust their hand/wrist position at any time during the course of an exercise without causing strain or binding to the wrist.

11. Claims 30, 32-34 and 36-38 rejected under 35 U.S.C. 103(a) as being unpatentable over *Fulks* (US Pat. 6,500,106 B1) in view of *Simonson* (US Pat. 5,788,614). *Fulks* has been discussed above, and such discussion is incorporated herein. *Fulks* discloses the invention as claimed except for the sleeve having at least one bearing therein (claim 33).

Simonson discloses an exercise device comprising an arm assembly having a sleeve 33 or 35 mounted at one end for pivoting about an axle 32 or 34. Sealed bearings are mounted

within the sleeves (col. 6, lines 38-42). It is well known in the exercise art to provide bearings between pivoting members to reduce unwanted friction.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sleeve of *Fulks* with the bearings of *Simonson*, in order to reduce unwanted friction at the third axle so that the arm assembly moves freely.

Response to Arguments

12. Applicant's arguments with respect to claims 24 and 26 rejected as being anticipated by *Telle* have been considered but are moot in view of the new ground(s) of rejection. In response to Applicant's argument that *Telle* does not disclose a first axle pivotally connected with a second axle as required in new claim 30, the new rejection using *Telle* discloses that the handle assembly of *Telle* comprises a first axle 49' pivotally connected with second axle 95.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Carlson et al. (US Pat. 4,772,015), *Tatom* (US Pat. 4,773,398), *Eckler* (US Pat. D317,032), *Roepke* (US Pat. 5,334,113), *Haber et al.* (US Pat. 5,399,133), *Dillard* (US Pat. 5,588,942), *Miller et al.* (US Pat. 5,755,645), *Habing et al.* (US Pat. 5,897,467), *Voris* (US Pat. 6,471,624 B1) and *Cybex International, Inc.* (Cybex Eagle Premier Strength brochure, 11080 Arm Extension machine) disclose exercise devices having handle assemblies similar and analogous to the claimed invention.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting all formal correspondence is (703) 872-9306.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700



Victor K. Hwang
May 14, 2004